

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action mailed September 20, 2005. At the time of the Final Office Action, Claims 36-46 were pending in the Application. Applicant amends Claims 36 without prejudice or disclaimer. The amendments to the claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarifies subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 112 Rejection

The Examiner rejects Claims 36-46 under 35 U.S.C. §112, first paragraph. Applicant has made an amendment to address the Examiner's concern. Applicant expresses his gratitude to the Examiner for his suggestion.

Section 102 and 103 Rejections/ Double Patenting and Provisional Rejections

The Examiner provisionally rejects Claims 36-46 under 35 U.S.C. §102(e) as being anticipated by co-pending application No. 09/608,657. This rejection is respectfully traversed for the following reasons. The Examiner provisionally previously rejected Claims 36-39, 41-44, and 46 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 2 of co-pending Application No. 09/608,657 in view of U.S. Patent No. 5,647,035 issued to Cadeddu et al. (hereinafter "*Cadeddu*"). The Examiner also provisionally previously rejected Claim 45 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 2 of co-pending Application No. 09/608,657 in view of *Cadeddu* as applied to Claim 36, and further in view of Ramaswami et al. (i.e. an article entitled "Optical Networks: A Practical Perspective," hereinafter "*Ramaswami*").

Applicant has submitted a Terminal Disclaimer, which is appended to this response, in order to overcome the nonstatutory double patenting rejection, as well as the §102 rejection. Applicant respectfully requests that the rejections be withdrawn.

It should be noted that filing of the Terminal Disclaimer should not be construed as an agreement with or an acquiescence to the propriety thereof. Applicant has only filed such an item in order to advance prosecution in this case. Applicant reserves the right to comment on the

appropriateness of the Terminal Disclaimer at a future time, should Applicant deem it appropriate to do so.

Accordingly, the claims are now in condition for allowance. Notice to this effect is respectfully requested in the form of a full allowance of the pending claims.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

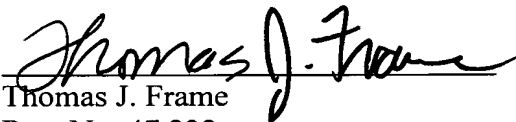
An amount of \$130.00 is required to satisfy the fee under 37 C.F.R. §1.20(d). Attached herewith is a check in the amount of \$130.00 to satisfy the terminal disclaimer fee.

The Commissioner is hereby authorized to charge additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact its attorney, Thomas J. Frame, at (214) 953-6675.

Respectfully submitted,

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